IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 19564 of 2003(D)

PETITIONER:

M/S. GHATGE PATIL TRANSPORTERS LTD.,
REPRESENTED BY ITS REGIONAL MANAGER P.AJAYAN,
H.O.KOLAPUR, 1/107-B, DHAYALU STREET, COIMBATORE.

BY ADV. SRI.V.V.ASOKAN
SMT.S.AMINA
SRI.SUNIL SHANKER

RESPONDENTS:

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1. **EXCISE COMMISSIONER, THIRUVANANTHAPURAM.**

2. **ADDITIONAL EXCISE COMMISSIONER, THIRUVANANTHAPURAM.**

3. **THE ASSISTANT EXCISE COMMISSIONER, PALAKKAD.**

BY GOVERNMENT PLEADER SRI. BENJAMIN PAUL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.5964/2003 IN WP(C) NO.19564/2003 D

DISMISSED

4/09/2007 **SD/- ANTONY DOMINIC, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE REPRESENTATION PREFERRED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DTD. 11/10/2001.**

EXT.P2: **COPY OF THE RELEASE ORDER PASSED BY THE 3RD RESPONDENT DTD. 19/11/2001.**

EXT.P3: **COPY OF THE OBJECTIONS FILED BY THE PETITIONER .**

EXT.P4: **COPY OF THE ORDER OF THE 3RD RESPONDENT DTD. 29/12/2001.**

EXT.P5: **COPY OF THE ORDER OF THE 2ND RESPONDENT DTD. 9/07/2002.**

EXT.P6: **COPY OF THE ORDER OF THE 2ND RESPONDENT DTD. 3/09/2002.**

EXT.P7: **COPY OF THE SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT DTD. 24/02/2003.**

EXT.P8: **COPY OF THE REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD. 4/04/2003.**

EXT.P9: **COPY OF THE ORDER OF THE 1ST RESPONDENT DTD. 5/06/2003.**

/TRUE COPY/

P.A.TO JUDGE

KSS

ANTONY DOMINIC,J.

W.P (C) No. 19564 of 2003

Dated this the 4th day of September, 2007

J U D G M E N T

Petitioner has filed this writ petition seeking to quash Exhibit - P9 and for direction to release the lorry bearing No. KL-9F 9026 to the petitioner. On the allegation that the petitioner's truck, a common carrier, carried a parcel containing 164 litres of Indian Made Foreign liquor, the proceedings were initiated against the petitioner's vehicle which resulted in its confiscation. On an appeal filed under Section 67 B of the Abkari Act, Additional Excise Commissioner passed Exhibit-P5 order allowing the appeal and remanded the proceedings to the Assistant Excise Commissioner for taking a fresh decision. In pursuant to Exhibit-P5, the Assistant Excise Commissioner reconsidered the matter and passed Exhibit-P6 order that the vehicle be permanently released to the petitioner, being the registered owner of the vehicle.

2. Subsequent to that Exhibit-P7 show cause notice was issued by the 1st respondent calling upon the petitioner as to why Exhibit-P6 order shall not be revised under Section 67 (F) of the Abkari Act. Although, petitioner filed Exhibit-P8 reply to

Exhibit-P7, Exhibit-P9 order was issued rejecting the contentions of the petitioner and ordering confiscation of the vehicle. It is against Exhibit-P9 order this writ petition has been filed.

3. The main contentions in the writ petition are that an appeal filed against Exhibit -P6 was pending and in view of the pendency of the appeal, the 1st respondent did not have the power to invoke his revisional powers under Section 67 F of the Abkari Act. It is also contended that the exercise of revisional powers could be only before the expiry of thirty days of Exhibit-P6 and that Exhibit-P7 was issued only on 24.2.2003 and Exhibit-P9 on 5.6.2003. According to the petitioner, this was much beyond the time limit specified in Section 67 F and for that reason also the order is vitiated. It is also contended that the petitioner was not afforded an opportunity of hearing before passing Exhibit-P9.

4. It is evident from Exhibit-P9 that the case was initially posted to 21.5.2003. However, on that day there was a general strike and therefore the case was adjourned and was posted to

4.6.2003 and on that day the representative of the petitioner did not appear for the hearing. It is submitted by the respondents that when the case was adjourned no further notice was issued to the petitioner. If that be so, the petitioner cannot be faulted for its non-appearance on 4.6.2003.

5. Section 67 F requires that before any order is passed to the prejudice of a person, such person shall be given an opportunity of being heard. In this case, the adjournment of case was not on account of any fault of the petitioner and therefore the respondent should have issued fresh notice to the petitioner giving them an opportunity of hearing on the adjourned date. This having not been done, I find that Exhibit-P9 is vitiated for violation of the principles of natural justice. Accordingly, Exhibit-P9 will stand quashed and the 1st respondent shall give notice to the petitioner and reconsider the matter in accordance with law and take a fresh decision on Exhibit-P7.

I clarify that I have not decided on the merits of the contentions raised by either of the parties. It will be open to the

petitioner to urge all their contentions including the one of delay and the 1st respondent shall pass a speaking order dealing with all those contentions.

The writ petition is disposed of as above.

(ANTONY DOMINIC, JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007